IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.82 OF 1994.

Khatija Abdulla Salim & ors. : Appellants.

versus

The Municipal Corporation of

Greater Bombay : Respondents.

Mr.R.B.Khanolkar for the appellants.

None for the respondent.

CORAM : D.G.DESHPANDE,J.

DATED : 13th APRIL 2005.

ORAL ORDER

1. Heard the advocate for the appellants. Nobody is present for the respondents. The appellants are the original plaintittis. They have filed this appeal against the order of dismissal of the suit by the City Civil Court Bombay. The plaintiff has filed the suit against

the Respondents BMC challenging the notice under Section 351 of the BMC Act. The trial Court after the written statement came to be filed framed the following Issues :-

ISSUES :-

1. Whether the Defendants prove that the suit is not maintainable for want of notice undr section 527 of the B.M.C. Act ?

2. Whether the Plaintiff proves that he is the owner of the shed admeasuring 18.6" x 13.6" and the same is included in City Survey Plan and is existing prior to 1961?

3. Whether the plaintiff proves that notice being No.BM/144/SR dated 3rd March 1973 is illegal?

4. Whether the Plaintiff proves that the work referred to in the notice can be tolerated or regularised?

5. Whether the Plaintiff is entitled to any relief ?

6. What order ?

The trial Court gave affirmative replies to Issue Nos. 2, 3 and 4 giving findings on facts in favour of the plaintiff. However, the suit was dismissed for want of notice under Section 527 of the B.M.C. Act and the contention of the Respondents/BMC was accepted in that regard. It is against this order that the present appeal is filed.

2. The notice under section 351 dated 10.9.1973 was preceded by long correspondence between the plaintiff and the defendants . The attempts were made by the respondens to demolish the structure on the very same day. Therefore, it was a case of extreme urgency for the plaintiff to file the suit for injunction. The suit came to be filed in September 1973 as per the copy of the plaint given to me by the plaintiff’s advocate. There was no time for the plaintiff to serve notice under section 527 and wait for statutory period. If the suit was not filed, the structure would have been demolished, and therefore, in view of that matter, the

findings of the trial Court on Issue No.1 cannot be upheld. So far as other Issues are concerned, the findings given by the trial Court are in favour of the plaintifff. There is no cross appeal. Nobody is present for the respondents. Therefore, the following order :-

:ORDER:

The appeal is allowed.

The order of dimissal of the suit is set aside.

The suit of plaintiff for injunction only is decreed. The Respondents are injuncted from demolishing the structure admeasuring 18’.6" x 13’.6" situate at Dr.C.Gidwani Road, Chembur, Bombay 74 pursuant to the notice dated 3rd March 1973 of the respondents.

No order as to costs.

[D.G.DESHPANDE]

13/04/2005 JUDGE.